IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.969 OF 2005

Hanumant Tayappa Kamate ...Applicant

vs.

State of Maharashtra & ors. ...Respondents

Miss D.M.Shah,Advocate appointed for the Petitioner
Ms Rajeshree Gadhvi, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 3,2005

P.C.:

1. This Petition is filed through jail by the Petitioner challenging the order dated 24th January 2005 by which the Application for furlough leave made by him was rejected. The order dated 24th January 2005 shows that the furlough leave was denied on the ground of adverse police report by invoking Rule 4 (4) of the Bombay Prisons (Furlough and Parole) Rules, 1959. The order discloses that if the Applicant is enlarged on furlough leave, there will be a threat to the witnesses who had deposed against the Petitioner as well as to the relatives of the witnesses.

2. The learned A.PP. has produced for my perusal adverse police report dated 26th May 2004. The police report records that there is nothing wrong with surety offered by the Petitioner. It appears that the statement of the mother of the victim of the offence committed by the Petitioner was recorded. In the statement, the said lady has stated that her

apprehension is that if the Petitioner is released on furlough leave, he will give threat to her and to her family members to kill them and there was no male member in her family. The police report discloses that if the Applicant is enlarged on furlough leave, he will stay with his mother at Mahim Police Colony, Slum near creek, Mahim and the place of residence of the mother of the victim is near Sion Hospital, Dharavi.

3. Considering the distance between the two places, the mere apprehension expressed by the mother of the victim cannot be a ground for rejection. The ground available under Sub rule 4 of Rule 4 of the said Rules of 1959 will obviously not apply. The said ground is that the release is not recommended by the Commissioner of Police on the ground of public peace and tranquillity. There is no recommendation to that effect of the Commissioner of Police. The report which is sent by the Senior Inspector of Dharavi Police Station does not disclose that for the reasons of public peace and tranquillity release of the Applicant is not recommended.

4. Hence the order dated 24th January 2005 deserves to be quashed and set aside. The Application made by the Applicant deserves to be reconsidered by the Authority in the light of the observations made in this Judgment.

5. Hence I pass the following order :

i) The order dated 24th January 2005 is quashed and set aside. The Application dated 5th April 2004 made by the Petitioner for grant of furlough leave shall be reconsidered by the concerned Authority in the light of observations made in this Judgment.

ii) The Application shall be decided afresh within a period of 12 weeks from today.

iii) Copy of this order be forwarded to the Petitioner.

iv) Parties to act upon an authenticated copy of this order.

JUDGE